IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20/11/2004

CORAM

THE HON'BLE MR.JUSTICE K.P.SIVASUBRAMANIAM

W.P.No.21756 of 2000
and W.P.M.P.No.43029 of 2003

Kannada Veera Saiva Saineegar Sangam
No.7 & 8, Malli Pillaiyar Koil Street
Kosapalayam, Arni,
Tiruvannamalai District,
by its Secretary. .. Petitioner

-Vs-

1. The State of Tamilnadu
rep. by the Secretary
Revenue Department
Fort St.George
Chennai-600 009.

2. The District Collector
Thiruvannamalai District
Thiruvannamalai. .. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India for the issue of a writ of Mandamus directing the respondents to assign the land in S.No.533 of an extent of 4 acres 44 cents in Thiruvannamalai Town to the petitioner Sangam as per the decree of this Court in L.P.A.No.139 of 1988 dated 29.10.1997 within a time to be fixed by this Court.

!For petitioner in W.P./1st
respondent in WPMP 43029/2003: Mr.K.Yamunan

For respondents in W.P. : Miss V.Velumani
Addl. Government Pleader

For petitioner in WPMP No.
43029 of 2003/proposed
third respondent : Mr.R.Yashod Vardhan

:ORDER

The petitioner Sangam seeks for a Mandamus to direct the respondents to assign the land in survey No.533 of an extent of 4 acres and 44 cents in

Thiruvannamalai Town to the petitioner Sangam as per the decree of this Court in L.P.A.No.139 of 1988 dated 29.10.1997 within a period to be fixed by this Court.

2. According to the petitioner, the Sangam consists of members belonging to the Veera Saiva Saineegar who are residing in various parts of Tamil Nadu owning extensive properties both at Arni and at Thiruvannamalai. Of the various properties owned by the Sangam in Thiruvannamalai, one such property is called "Pelakothu Flower Garden" at Chengam Road, comprised in Survey Nos.1862, 1863, 533 and 534 of an extent of 0.74, 2.52, 4.44 and 1.50 cents respectively. Though the society was formed in the year 1927, the community members were in possession and enjoyment of the properties for more than 200 years. The property in question is situated immediately to the north of Ramanashram and some portions have been leased out to some of the inmates of the Ashram at their request at nominal rent for residential purposes.

3. In course of time, the individuals to whom portions of the property were let out, started disputing the title of the petitioner Sangam. The Government of Tamilnadu claimed that the property was shown as poramboke in the revenue records and thus disputed the right of the Sangam. The Sangam, therefore, instituted O.S.No.63 of 1973 on the file of the Subordinate Judge, Thiruvannamalai, against the State of Tamil Nadu and others for declaration of its title and for delivery of possession of four items of the properties. Learned Subordinate Judge, Thiruvannamalai, by judgment and decree dated 14.12.1978, dismissed the suit and the appeal filed by the Sangam in A.S.No.1063 of 1979 was dismissed by a learned single Judge of this Court on 14.3.1985. As against the said judgment, a Letters Patent Appeal was filed in L.P.A.No.139 of 1988. In the Letters Patent Appeal, the claim of the petitioner Sangam was confined to the extent of 4 acres and 44 cents in Survey No.533. The L.P.A. was allowed and a decree was granted on 29.10.1997 and the 9th defendant/the State Government, represented by its Collector of North Arcot, Vellore, was directed to assign the third item of the suit property, namely, S.No.533 of an extent of 4 acres and 44 cents to the plaintiff Sangam within a period of four months from the date of the application to be made by the plaintiff.

4. The petitioners contend that pursuant to the decree in the Letters Patent Appeal, the petitioner Sangam has been applying for assignment of the land by applications dated 29.11.1997, 30.12.1997, 27.1.199 8, 25.2.1998, 24.6.1998, 18.7.1999, 4.10.1999, 5.7.2000 and finally, on 16.10.2000. In spite of repeated representations, the Government of Tamil Nadu did not take any action to comply with the terms of the decree. Though the decree had directed assignment of the land within a period of four months, even after three years from the date of judgment and several applications, the Government failed to assign the land. This resulted in the Sangam filing an Execution Petition in E. P.No.25 of 1999 against the State. Though notice was served on the Collector on 21.6.1999, he was taking time for filing counter affidavit till 2.11.1999 and as no counter affidavit was filed, the following ex parte order was passed:

" As per the High Court direction, the respondent is directed to assign the schedule mentioned property to the petitioner and intimate to this Court. "

5. The Executing Court adopted a strange procedure in addressing a letter to the Collector on 26.11.1999 and directing the Collector to assign the land and to intimate the same to the Executing Court on or before 23.12.1999. The Collector, in his reply dated 30.12.1999 addressed to the learned Judge, has stated that since Thiruvannamalai had become the District Headquarters, there is an order by the Government prohibiting assignments and that it was only the Government which has the power to assign the lands. On receipt of the said reply, nothing further was done by the Executing Court or by the Collector and the matter was being adjourned from time to time without any appearance or representation by the Collector. Hence, the above writ petition.

6. In spite of several adjournments, no counter affidavit has been filed on behalf of the respondents.

7. Mr.K.Yamunan, learned counsel for the petitioner, after stating the series of facts which ultimately led to the filing of E.P.No.25 of 1999, has stated that in spite of a decree of this Court of the year 1997 directing the respondent to assign the land within a period of four months from the date of the application to be made by the plaintiff and in spite of several applications as aforesaid, the respondents have not complied with the decree. The plaintiff, having no other alternative, resorted to execution proceedings, and even so, no orders have been passed either by the Executing Court to execute the decree nor the respondent has taken any steps to comply with the decree.

8. I have also heard the learned Additional Government Pleader.

9. The only defence which is taken in the face of a valid decree of this Court, is that in terms of the various Government Orders and Thiruvannamalai, having become the District Headquarters, there was a bar on assignment of land and that, at any rate, assignment can be made only by the State Government and not by the Collector.

10. The facts, as discussed above, disclose a very unpleasant and deplorable state of affairs, namely, the manner in which the respondents have been functioning in spite of a valid and binding decree of this Court rendered as early as in 1997. The terms of the decree are very clear admitting of no doubt or ambiguity, namely, a direction to the State Government represented by its Collector, to assign the property to the plaintiff Sangam within a period of four months from the date of the application to be made by the plaintiff. Apart from the

fact that the facts stated in the affidavit are not denied by filing a counter affidavit, uncontroverted materials have been placed before this Court to show that applications have been filed in terms of the Decree at least nine times from 29.11.1997 to 16.10.2000 without absolutely any response from the respondents. The petitioner could have approached this Court itself by filing

a contempt application if the order had been passed in a writ petition. But the direction being a civil Court decree, he had approached the Executing Court by filing E.P.No.25 of 1999. Even thereafter, the Collector goes on taking a series of adjournments for filing counter affidavit, as could be seen from the decree extract. Ultimately, as no counter affidavit was filed, an ex parte order was passed by the Executing Court, requesting assignment of the property, instead of passing appropriate orders for execution by invoking the provisions under Order XXI of C.P.C., so as to secure proper obedience of the decree. In view of the weakkneed attitude of the civil Court, as could be expected the respondents do not feel obliged to either respect the decree of the High Court or the order in execution. Strangely, the Subordinate Judge, Thiruvannamalai, not being satisfied in passing an ineffective order, also writes a letter to the Collector in Dis.928/99 dated 26.11.1999, which is as follows:

" Sir,
Sub: Assignment Assignment of 4.44
cents in favour of Kannada Veera
Saiva Saineegar Sangam, Arni,
Ordered Regarding.

Ref: 1. High Court directed in Lr.No.
133/38, dt. 29.10.1997.

2. Subordinate Judge's Exparte
order in REP 25/99 dt. 2.11.1999
in OS 63/73.

3. This Courts summon B.10.1340/99
dated in 28.4.1999.

....

The immediate attention of the Collector of Thiruvannamalai District is drawn in the reference cited. Before bifurcation of Thiruvannamalai District, the Vellore Collector has been directed to assign 4.44 acre in favour of the Kannada Veera Saiva Sangam, Arni, by the High Court, Madras as per the reference Ist cited. Further 4 months time has also been given to assign records for the said petitioner as per the High Court order.

Now the petitioner namely M.P.Balasundaram Chetti who is the Secretary of the said Sangam filed an Execution Petition in the Sub-Court, Thiruvannamalai to direct the Collector of Thiruvannamalai District to assign the land in favour of the petitioner as per the High Court order. This Court has sent a notice to the District Collector, Thiruvannamalai in S.No.1340 /99

dt. 28.4.1999 and the same was served. But vakalath has filed before the Court by the Government Pleader, but he has not filed counter. The respondent called absent and set exparte on 2.11.1999.

Therefore the Collector of Thiruvannamalai is hereby directed to

assign 4.44 acre in Town T.S.No.533 in favour of the petitioner without further delay. Further the Collector of Thiruvannamalai District is directed to assign the land to the said petitioner and the fact should be intimated to this Court on or before 23.12.1999.

Sd.A.Sampath
Subordinate Judge
Thiruvannamalai. "

11. This sort of a letter to be addressed by a Court to a judgment debtor is unheard of and reflects only an unbecoming trend on the part of the judicial officers. Such attitude adopted by the learned Subordinate Judge has met with an expected and consequential reaction by the Collector, who also writes a letter back to the Subordinate Judge on 30.12.1999 in f/vz;/M2-85087-92 as follows:

(Vernacular portion deleted)

12. Both the reasons given in the said letter are absolutely untenable. The right of the petitioner flows from a judgment and decree of this Court in a civil suit. The fact of Thiruvannamalai Town having become a District Headquarters subsequently cannot have any relevance to refuse to comply with a valid decree of the civil Court. The decree does not become a nullity or inexecutable by the administrative action of bifurcation of the District. The second reason that it is only the State Government which is entitled to pass orders on the assignment is also without any substance. In the suit, the State Government of Tamil Nadu was impleaded as the 9th defendant and as 8th respondent in the Letters Patent Appeal. The Collector is also shown as a representative of the State Government of Tamil Nadu. Therefore, the attempt on the part of the Collector to make it appear as though the order of assignment has to be passed by some other party who is not a party to the suit is without any substance and also reflects a deplorable sense and attitude of irresponsibility on the part of a responsible District Head of the Executive.

13. Enforcement of rule of law depends on the effective functioning of the respective authorities. There is no question of any authority being superior or inferior and each authority in the discharge of their duties, have to exercise their power in an effective manner. For instance, while invoking powers under Revenue Recovery Act, the competent authority under the Act has enormous powers to see to it that the revenue is recovered after due notice whoever might be the judgment debtor. Likewise, a Decree of the civil Court has to be executed in an effective manner and the Court is vested with coercive powers to see to it that the Decree is properly complied with. It is not expected of a Court to stand before a judgment debtor with a begging bowl.

14. The less said about the attitude of the Sub Court and respondents would be the better. It is rather unfortunate that a judicial officer should write a letter to the Collector/ judgment debtor begging the judgment debtor to implement the decree of the High Court. As could be expected, such an

attitude of the Subordinate Judge has met with a deserving reply, the Collector citing two irrelevant and irresponsible reasons for not complying with the directions in the Decree of the Court and demanding more and more time indefinitely to comply with the decree. As on date, more than seven years have passed. Even in the above writ petition, the respondents have not taken a proper stand. At least by this time, they should have come forward with an order complying with the decree of this Court, which has not been done even as on date, four years after the filing of the writ petition. Therefore, this writ petition deserves to be allowed on stringent terms.

15. After orders were reserved in the above writ petition, Sri Ramanashram, Thiruvannamalai, had filed W.P.M.P.No.43029 of 2003 to implead themselves as the third respondent in the petition. In the affidavit filed in support of the petition, it is stated that in Survey No.5 33, the Samadhi and Ashram of Sri Annamalai Swami, a devotee of Sree Ramana Maharishi are situated and that some rooms and cottages are also situated in Survey No.533. Therefore, they had made a representation on 27.10.2003, requesting for the assignment of the land, which are in occupation of the petitioner Ashram. It is further stated that the first respondent/writ petitioner can be assigned 4.4 acres after excluding the landmarks.

16. A counter affidavit had been filed by the writ petitioner opposing the petition for impleadment. The writ petition has been filed only for implementing the decree of this Court in L.P.A.No.139 of 1988 and in terms of the decree, the interested parties are only the writ petitioner and the respondents in the writ petition, as far as the property in question is concerned. No other party has any right or interest in the subject matter and the presence of the party seeking to be impleaded is not at all required for adjudication of the same. It is further stated that defendants-1 to 6 in the suit are persons who were actually in occupation of the portions of Survey No.533 as the tenants under the plaintiff Sangam and they were paying the rents to the Sangam, acknowledging its title. Annamalai Swamy, mentioned in paragraph 6 of the affidavit, was the first defendant in the suit and Kunju Swamy, mentioned in paragraph 5 of the affidavit, was the second defendant. One Mr.Cohen, mentioned in paragraph 5 of the affidavit, had executed several lease deeds. The right of all these persons have been dealt with and considered in detail in the appeal and their claims had been negatived, and therefore, it was not open to the petitioner to project any imaginary right to any portion of Survey 533. In fact, T.N.Venkataraman, father of V.Subramanian, who had filed the affidavit in support of the impleadment petition, was the President of Ramanashrama Board and he has given evidence in the suit as P.W.3, supporting the title of the plaintiff Sangam to S.No.533.

17. After hearing the parties, as I had indicated my mind that the impleading petitioner cannot have any right to interfere in the writ petition which is aimed only at implementing a decree of the civil Court which had become final, learned counsel for the petitioner seeking impleadment requested time to negotiate with the writ petitioner. Sufficient time was given. Learned counsel for the writ petitioner states that the Secretary had informed him that after the assignment is made in terms of the Decree, the request of the impleading party will be considered by the General Body.

18. I have considered the issues arising out of the petition filed by the third party in W.P.M.P.No.43029 of 2003. Apart from the fact that in this writ proceeding, this Court is concerned only with the undeniable claim and right of the writ petitioner for implementing the decree of this Court in the Letters Patent Appeal, even otherwise, the claims made by the impleading petitioner does not also appear to be justified. Though Ramanashram has not been made a party in the suit, as stated in the counter affidavit, all the persons named in the affidavit filed in

support of the impleadment petition, have either been parties or witnesses before the civil Court. The positive assertion on the part of the writ petitioner that Annamalai Swamy was the first defendant in the suit and Kunju Swamy was the second defendant in the suit are not denied by the petitioner. The further contention that one Cohen had executed lease deeds in favour of the plaintiff Sangam is also not denied. It is also significant to bear in mind the most crucial fact, namely, that T.N.Venkataraman, father of V.Subramanian, who has filed the affidavit for impleadment, was the President of Ramanashram and he had given evidence as P.W.2 in the suit, supporting the title of the petitioner Sangam to Survey No.533. This assertion on the part of the writ petitioner is also not disputed. In the face of all the aforesaid undisputed facts pleaded by the writ petitioner, there is no justification for the impleading petitioner to obstruct the proceedings for executing the decree in a lawful manner. This Court did not want to stand in the way of any possible compromise and it is only for that purpose the hearing was adjourned further. The Secretary of the writ petitioner has informed the counsel that the request of the impleading party will be considered by the General Body after the assignment is made.

Therefore, nothing further can be stated in favour of the impleading petitioner. As no proper rights have been shown in favour of the impleading party, there is no other alternative except to dismiss the said application.

With the result, I am inclined to pass the following order:
(i) W.P.No.21756 of 2000 is allowed and there will be a direction to the respondents to pass orders of assignment in favour of the petitioner in terms of the judgment and decree of this Court in L.P.A.No.1 39 of 1988 dated 29.10.1997 within a period of ten weeks from the date of receipt of a copy of this order. Having regard to the narration of facts as above, no request for further extension of time for complying with the said order, shall be entertained.
(ii) The writ petition is allowed with costs of Rs.10,000/-, out of which, a sum of Rs.5,000/- shall be paid to the petitioner and a sum of Rs.5,000/- shall be paid to the Tamil Nadu State Legal Services Authority, Chennai.
(iii) W.P.M.P.No.43029 of 2003 is dismissed and it is up to the writ petitioner to consider the request of the petitioner seeking impleadment after the orders of assignment are passed by the Government.

Index: Yes
Internet: Yes

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To:
1. The Secretary
State of Tamilnadu
Revenue Department
Fort St.George
Chennai-600 009.

2. The District Collector
Thiruvannamalai District
Thiruvannamalai.